

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY KING COUNTY
TO WILLIAM CURRIN,

WILLIAM CURRIN,

Appellant,

v.

KING COUNTY,

Respondent.

SHB No. 83-47

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a shoreline substantial development permit denied by King County to William Currin, came on for hearing before the Shorelines Hearings Board; Gayle Rothrock, Chairman, David Akana, Lawyer Member, Lawrence J. Faulk, Vice Chairman, Rodney M. Kerslake, Beryl Robison and Nancy R. Burnett, convened at Seattle, Washington on January 19, 1984. Administrative Law Judge William A. Harrison presided.

Appellant appeared and represented himself. Respondent appeared

1 by Robert D. Johns, Deputy Prosecuting Attorney. Reporter Nancy
2 Swenson recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Board makes these

5 FINDINGS OF FACT

6 I

7 This matter arises along the Snoqualmie River about three miles
8 upstream from Fall City, in King County.

9 II

10 Appellant, William Currin, owns 102.39 acres there with about 1200
11 feet of river frontage. The land is now undeveloped and used for
12 pasture. The David Powell Road runs from Fall City to the site, and
13 alongside the River while on the site, ending shortly beyond.
14 Scattered residences lie west of the site along the David Powell Road;
15 the Fall City Forest Theater, a summer theater, lies just east of the
16 site.

17 III

18 On January 4, 1983, appellant applied to King County for a
19 shoreline substantial development permit. The proposed development
20 would extend an access road south from the David Powell Road and
21 extend SE 56th Street each for the purpose of serving the 17 lots into
22 which the site would be divided. Each lot would be 5 or more acres in
23 size. The application did not propose further subdivision, nor was
24 the propriety of further subdivision established on this record. The
25 development of the 17 lots should not significantly affect the level

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of service which the David Powell Road now provides. There is seasonal flooding of the road.

Though the lots are designed for single family residences, no home construction is planned within the 100-year floodplain of the River. All lots have building sites outside that floodplain. The appellant agrees to allow public access to the river over the strip of land between the David Powell Road and the River, provided that the area is policed and on-shore use limited to fishing. The riverfront has been historically used for fishing.

King County proposes a trail along the former railroad right of way which crosses the rear of the site. This would be part of the King County Trail System.

IV

King County issued a declaration of non-significance for the proposal under the State Environmental Policy Act, 43.21C RCW. The King County Department of Planning and Community Development recommended approval of the application with 11 conditions. The King County Hearing Officer, after public hearing, entered a Report and Decision denying the application on September 29, 1983. Appellant requested review from this Board on October 31, 1983. A pre-hearing conference was held on December 21, 1983.

V

The proposed north-south access road on the site draws very near to a creek which crosses a corner of the site and empties into the River. The road was proposed in this fashion to minimize the grade of

1 the road which is approximately 12% over the portion near the creek.
2 The creek may also be a source of domestic water supply for a property
3 owner to the west of the site. The access road approaches the creek
4 at the point where the domestic water is withdrawn. Although not
5 directly applicable here, roads must be 100 feet away from domestic
6 water wells under rules of the King County Department of Public
7 Health. The access road poses a risk of pollution to the creek from
8 erosion or runoff. A vegetated buffer between the road and creek
9 would reduce the risk of erosion or runoff from harming the waters of
10 the creek.

11 VI

12 The King County Shoreline Master Program (KCSMP) designates the
13 site in question as a conservancy environment. KCSMP Supplement,
14 p. 15. Single family residential development is a permitted use in
15 the conservancy environment. KCSMP Sec. 609(2), p. 39. Single family
16 residential development shall be setback 50 feet from the ordinary
17 high water mark but not within the floodway of a river. KCSMP Id.
18 The minimum required lot area in the conservancy environment is 5
19 acres, with exceptions not applicable here. KCSMP Sec. 610, p. 39.
20 All development is required to provide adequate surface water
21 retention and sedimentation facilities during the construction
22 period. KCSMP Sec. 6.03(3), p. 37. Development proposed in
23 shorelines shall permit public access to continue where part of the
24 site is presently being used and has historically been used for public
25

access or where there is a proposed trail in the King County Trail
System. KCSMP Sec. 603(8), p. 38.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is
hereby adopted as such.

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

I

We review the proposed development for consistency with the
applicable (King County) shoreline master program and the provisions
of the Shoreline Management Act (SMA). RCW 90.58.140.

II

The policy of the SMA contemplates protecting against adverse
effects to the waters of the state. RCW 90.58.020. The proposed
development would be consistent with that policy provided that the
north-south access road is built with a 100 foot vegetated buffer
between it and the creek now believed to serve as a domestic drinking
water source. Alternatively, appellant has offered to bear the cost
of relocating the domestic withdrawal upstream or substituting a
domestic water well. In the event such an agreement with the
neighboring property owner is reached, the vegetated buffer may be
reduced in width, to about 60 feet. A buffer is necessary in this
case to meet the policy of the Act protecting waters of the state.

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III

The proposed development would be consistent with KCSMP Sec. 603(8), p 38, preserving public access if public use of the land between the river and David Powell Road were limited to day use with signs emphasizing fishing.

For consistency with the policy of the SMA, RCW 90.58.020, protecting the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines, King County should provide a means of litter disposal and grounds maintenance at the riverside public access.

IV

A shoreline substantial development permit should be issued to the appellant with the following 11 conditions which are necessary to conform the proposed development to the KCSMP and the SMA. Each condition is supported by the testimony and exhibits presented to the Board. These are the conditions recommended by the King County Department of Planning and Community Development (KCDPCD), to which appellant agrees, except as modified in the matter of locating the access road (condition 2, below) and in the particulars of public access to the river (conditions 4 and 5, below). We have also eliminated the requirement for a monetary contribution by appellant to the King County trail system, which was recommended by KCDPCD. We are unable to find a basis for such a requirement within the SMA or KCSMP in this case. Such a contribution may or may not be authorized by the law relating to other approvals which the appellant must obtain.

The 11 conditions are:

1. Storm drainage plans for the short plats shall be approved by the Department of Public Works, Surface Water Management Division. Said plans shall comply with the provisions of Chapter 20.50 of the King County Code. The applicant shall also provide and maintain temporary sedimentation collection facilities to insure that sediment laden water does not reach the natural drainage system. These facilities must be in operation prior to clearing and building construction, and satisfactorily maintained until construction and landscaping are completed and the potential for on-site erosion has passed.

2. A minimum 100 foot wide undisturbed buffer of natural vegetation shall be left along the small stream on the west side of the site. The proposed access road shall be moved to comply with this condition and shall be limited to 15% grade. Alternatively, if agreement is reached between appellant and the neighboring property owner that the neighbor can, at appellant's expense, relocate his point of domestic water withdrawal upstream or substitute a well, the buffer of natural vegetation may be reduced to about 60 feet.

3. The limits of the 100-year floodplain shall be shown on the face of the short plat, along with a covenant prohibiting placement of fill or the construction of structures within the 100-year floodplain.

4. The applicant shall grant to King County a public access easement for river access, fishing, general use and enjoyment between the existing right-of-way of David Powell Road and the Snoqualmie River along the entire length of the subject property. Said public access

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1 easement shall be shown on the face of the short plat and placed as a
2 covenant on the property to run in perpetuity or until modified by
3 King County based on a public hearing on the matter.

4 5. The applicant shall install two durable roadside signs or markers
5 on David Powell Road to indicate the boundaries of the public access
6 easement. One marker or sign shall be placed at either end of the
7 property on David Powell Road. Each sign shall emphasize fishing, and
8 shall limit activity to day use only. Design and wording of the
9 markers or signs shall be approved by the Department of Public Works,
10 the Parks Division, and the Building and Land Development Division
11 prior to installation. Said markers or signs shall be installed no
12 later than six months after final recording of the subject short
13 plats. King County shall provide a means of litter disposal on the
14 public access easement.

15 6. The applicant shall dedicate any interest he has in the abandoned
16 railroad right of way to King County.

17 7. In order to help prevent erosion and sedimentation caused by
18 excessive land clearing on the hillside, no clearing shall be allowed
19 in critical areas identified and marked on the face of the short plat.

20 8. The lots created by the subject short plats shall not be further
21 subdivided until such time as the David Powell Road has been upgraded
22 to the applicable County road standard from the western boundary of
23 the site to the Fall City Road and until the on-site north-south
24 access road has been upgraded to handle the additional traffic to be
25 generated by the re-subdivision.

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1 9. The proposed access road shall provide access to lot #1 and not
2 continue on to serve other future lots farther up the hill.

3 10. The applicant shall improve David Powell Road to rural road
4 standards across the frontage of the subject property. Additional
5 improvements to SE 56th Street shall be made or another access road
6 shall be constructed to serve lots 10-17. The choice shall be subject
7 to approval by the King County Department of Public Works.

8 11. Easements for the private roads shall be sixty feet in width with
9 a minimum fifty foot radius at the terminus. Sight visibility from
10 the private road(s) shall be a minimum 250 feet in both directions at
11 their intersection with the David Powell Road.

12 V

13 We make no conclusion regarding the propriety of future proposals
14 to further divide the site, if any.

15 VI

16 Any Finding of Fact which should be deemed a Conclusion of Law is
17 hereby adopted as such.

18 From these Conclusions the Board enters this
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ORDER

This matter is remanded to respondent, King County, with instructions to issue a substantial development permit with the 11 conditions set out in Conclusion of Law IV.

DATED this 13th day of MARCH, 1984.

SHORELINES HEARINGS BOARD

Gayle Bothrock
GAYLE BOTHROCK, Chairman

David Akana
DAVID AKANA, Lawyer Member

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LAWRENCE M. FAULK, Vice Chairman

Nancy R. Burnett
NANCY R. BURNETT, Member

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RODNEY M. KERSLAKE, Member

Beryl Robison
BERYL ROBISON, Member

William A. Harrison
WILLIAM A. HARRISON
Administrative Law Judge

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